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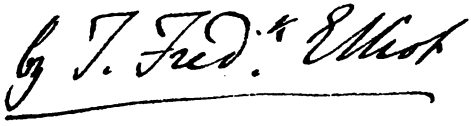
Henry Taylor
East Sheen

THE

CANADIAN CONTROVERSY;

ITS ORIGIN, NATURE, AND MERITS.



" Vous savez le Latin?"

" Oui; mais faites comme si je ne le savois pas: expliquez-moi ce que cela veut dire. — *Le Bourgeois Gentilhomme.*"

" Had the House not heard — not from a Canadian, nor from a foreigner, but from a Member of that House — a sort of satisfaction expressed at the defeat of British troops? Had they not seen a sort of gloating over the confiscation of public and private property in Canada?" — *Lord J. Russell's Speech, 22d December,* 1837.

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NOTICE TO THE READER.

I ONLY do not subscribe my name to this publication, because I believe the better usage is rather the other way; but I may be permitted to say, that I have no more desire to conceal than to obtrude myself. That I have had some occasion to make myself acquainted with the Canadian controversy, and some opportunity to obtain a local and rather intimate personal knowledge of men and things in the province, the following pages will, I hope, be not without evidence. But, far from desiring to arrogate any undue weight to their appearance, my principal object in this notice is to warn the reader against supposing, that whatever opinions he will find here are any other than the private opinions of

THE AUTHOR.

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THE

CANADIAN CONTROVERSY.

At a moment when general attention is so forcibly called, and by such distressing events, to the quarrel in Lower Canada, it becomes of importance to supply a correct answer to the question which is in every one's mouth, what it is about, and how it has arisen. This is the object of the present publication. It is not proposed to encumber it with long arguments, but merely to let people know what the controversy really is, to guard them against the misconceptions and hasty views which will naturally arise (perhaps be suggested), when new topics of an exciting kind are so suddenly pressed on the public mind, and then leave them with confidence to their own judgment. The facts are not ineloquent, and to give them a voice is all that is necessary. There is no occasion to perplex the statement with questions about this administration and that administration. Party politics have no entrance here; for all parties during many years past have, when in power, shown the utmost spirit of conciliation towards the men who are now in arms. The issue to be tried, there-

fore, is shortly between the statesmen of Great Britain, without distinction of party, on the one hand, and the agitators of Lower Canada on the other. Another preliminary remark is, that with a view to forming a judgment on the rights of the present struggle, it is needless to discuss each stage of the British Government's past policy. Throughout, until the present crisis, that policy has been yielding. Whatever, therefore, may have been its merits in other respects,—whether the concessions that were successively made ought to have been postponed or qualified, or, as some think, altogether withheld,—it is not the less certain that the fit return for them cannot have been rebellion, and that those who most loudly demanded them cannot now plead *these* as their reasons for plunging their followers into a deadly contest, their church and institutions into danger, and their country at large into the miseries of a civil war.

Immediately after the cession of Canada to Great Britain, the laws of England were introduced by a royal proclamation dated 7th October, 1763. In 1774 an act of parliament was passed restoring the French law in civil causes, securing the most ample toleration to the Roman Catholic Church and laity, and establishing a council with a power to make laws. Another Act of the same year (the 14 Geo. 3. c. 88., a statute much noted in subsequent disputes) repealed various burdensome duties that had been levied under the French Government, and substituted for them more moderate

duties on spirits and molasses, of which the proceeds were declared applicable by the Lords of the Treasury to the civil and judicial expenses of the colony. Both these statutes were intended, and were accepted, as valuable concessions. One proof of the contentment of the people at this time was their successful resistance to an invasion by the Americans in 1774; a resistance which, to their honour be it spoken, they have never failed to offer whenever an enemy to Great Britain has entered their territory. In 1791 was passed the Act, commonly called the Constitutional Act, which continues to regulate the form of government in the Canadas. It divided the former province of Quebec into the two provinces of Upper and Lower Canada, and conferred upon each a legislature consisting of a Governor, Legislative Council, and Assembly, designed to bear as near an analogy as circumstances would admit to the King, Lords, and Commons, of the Parent State.

For several years after this statute was passed, no collision took place between the Colonial Legislature and the Government at home. Local differences of more or less consequence prevailed from time to time, but the mother-country did not become involved in them. In 1812 the Canadians were amongst the foremost, and for a time almost the only, defenders of their country against the Americans.* In 1818, however, a change took

* A circumstance this, by the way, which a recent writer in the "Spectator" astutely observes, shows that they were no

place in the system of administration, which, however necessary and proper, gave the first occasion for the dissensions that sprung up soon after that date between the Assembly and the Government.

The expenditure of the colony had hitherto been defrayed out of permanent revenues within the control of the Crown, and the deficiency, as they were not equal to the whole demand, was annually supplied by the House of Commons. The Assembly offered to relieve the British Parliament of this charge, but the offer was not at first accepted. In 1818, however, the peace having occurred, and retrenchment being anxiously sought after in all directions that admitted of it, a different course was adopted, and from that time the Assembly was applied to for supplying the deficiencies of the permanent grants which the Government considered to be at its own disposal.

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better than Frenchmen. Had they been Englishmen, doubtless it would have been a more natural course to turn their arms against England. Perhaps, however, if this writer should be able to bestow his time again on the subject, he may find it not unedifying to inquire what course was pursued by the *English Militia* of Upper Canada on the same occasion. Or should he cast his eye on the history of Englishmen and Frenchmen in Europe, he may possibly discover that in any part of the world it is no more the exclusive characteristic of one than the other of these two noble races of men, to repel foreign aggression, from whatever quarter it may come. Let us hope that they may be equally proof against the "malice domestic," which in Parliament and elsewhere would now teach them so different a lesson.

It was not long after the introduction of this practice that financial differences broke out between the several officers successively in the administration of the Government and the Assembly, in which, however, the Assembly, being at first clearly in the right, speedily prevailed; but fresh matter of dispute did not cease to arise. In the progress of the dissension, one governor had recourse to the unwarrantable measure of ordering the issue of the Provincial funds by his own authority. The Assembly, on the other hand, steadily and unremittingly enlarged upon its demands. It soon denied the right of the Crown to the control of the permanent grants which had up to that time been considered at its disposal.

With respect, especially, to the duties under the 14 Geo. 3. c. 88., which had always been applied to the support of the Provincial Government by authority of the Lords of the Treasury, to whose appropriation they were by the terms of the statute consigned, the Assembly asserted that as the famous "Declaratory Act" of 1778, not merely announced that Great Britain would not after the passing of that act tax her colonies except for the regulation of trade, but added that any taxes of that nature should be applied by the same authorities as applied any Provincial duties levied in the same colony: this enactment deprived the Lords of the Treasury of the right to appropriate the proceeds of the 14 Geo. 3., and transferred it to the House of Assembly. The answer

was, that the act of 1778, being entirely prospective, could not supersede the provisions of the act of 1774; that the Lords of the Treasury, therefore, had not the power, even if they had the wish, to decline the office imposed upon them by the last-named statute, and that an extensive and undisputed usage in various colonies besides Lower Canada might be adduced in support of this view, which, moreover, was fortified and confirmed by an opinion of the law-officers of the Crown. There can be no doubt that in this controversy the Assembly was wrong in what it maintained to be the *actual* law. With respect, on the other hand, to what the law *ought to be*, it will be seen presently that their views were acceded to at home, and that a change was made accordingly.

These several debates on pecuniary matters did not proceed without attracting attention to various other topics of complaint. In the midst of them, too, great sums having accumulated in the hands of the Receiver-General, that officer failed to the amount of upwards of 96,000*l.** The end was, that

* It has been deemed an unanswerable grievance that this money has not been repaid by Great Britain. But although the omission to take sufficient pecuniary securities may be an evidence of mismanagement, and the failure of the individual be proof that he was not well selected, yet it may be doubted whether one part of an empire is to be assumed to guarantee another against the errors of their common government. It may be doubted whether Canada has any more right to call on Great Britain to bear the defalcation of servants in the colony, than Great Britain has to call on Canada to bear defalcations

the discontents were brought before the British Parliament in 1828, by petitions signed by no less than 87,000 persons, and brought over by three delegates named for the purpose, praying for redress of grievances. The petitions were referred to a Committee of the House of Commons.

The sitting of this committee in 1828 forms a very important æra in the history of Canadian affairs. The opinion of the writer of these pages (and he wishes to lay particular stress on the admission contained in the first part of it) is, that up to that period the Assembly was *right* in almost every one of the complaints which it preferred, and that in a renewed statement which it made of the same and of some additional grievances in 1831, it acted in good faith, and with good reason; but that when the whole of those grievances were put into course of adjustment, and several of the most distinguished, the most able, and most upright of the former adversaries of government were thus detached from

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here: "Where the tree falls, there it must lie." Be that as it may, and the question, no doubt, admits of dispute, what is certain is, that the Province now has in its hands a very valuable landed estate of Sir John Caldwell's, for which 150,000*l.* were offered a couple of years ago, while the remaining principal of his debt to the Province does not exceed 82,000*l.*; and that, the sale having been deferred till it can be effected to the satisfaction of the House of Assembly, a receiver is in the meanwhile appointed to gather the rents and profits on behalf of the Province. The judgment against Sir John Caldwell was given *without* interest.—*Commons' Papers*, No. 356. 1837. p. 5.

the Canadian opposition, it was an evil-minded knot of men who directed the counsels of the party that remained,—men rendered desperate by the fear of losing the power which they had hitherto enjoyed through the wrongs of the people, and therefore determined to spare no effort to prolong the quarrel; and that this was the spirit in which they fastened at last upon a demand for constitutional changes, which, if granted, would consolidate their dominion over all the institutions of the country; if refused, would serve them with a perpetual pretext for keeping up confusion.

A few words may describe the Canada Committee of 1828. It was liberally composed; it laboured assiduously; and it produced a Report which was hailed with acclamation by the party from whom the great mass of the petitions had proceeded. In what terms the assembly itself spoke of it, may be seen in the extract, quoted below*, from an address of theirs to the Governor

* "The charges and well-founded complaints of the Cana-
"dians before that august senate were referred to a Committee
"of the House of Commons, indicated by the Colonial Minister;
"that Committee, exhibiting a striking combination of talent
"and patriotism, uniting a general knowledge of public and
"constitutional law to a particular acquaintance with the
"state of both the Canadas, formally applauded almost all the
"reforms which the Canadian people and their representatives
"demanded, and still so fervently demand. After a solemn in-
"vestigation, after deep and prolonged deliberation, the Com-
"mittee made a Report, an imperishable monument of their
"justice and profound wisdom, an authentic testimonial of the
"reality of our grievances and of the justice of our complaints,

on the opening of the next Provincial Session. After such language as appears in that address, nothing can be more strictly accurate than to say, that the Committees' Report might thenceforward be supposed "a guide at once to the Canadian Assembly, "and to the Ministers of the Crown, of the rights "to be asserted by the one, and conceded by the "other;"—that "the questions in debate became "thenceforth by the common consent of both "parties, reducible to the simple inquiry, whether "the British government had, to the fullest extent "of their lawful authority, faithfully carried the "recommendations of the Canada Committee into "effect." Such are the terms in which this stage of the Canadian history is referred to in a Minute of one of the Colonial secretaries of state *, and with justice.

Of course it is not meant that new grievances might not occur, and deserve new attention; but so far as regards all complaints prior to 1828, they were distinctly acknowledged to be summed up

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"faithfully interpreting our wishes and our wants. Through "this Report, so honourable to its authors, His Majesty's Go-"vernment has become better than ever acquainted with the "true situation of this province, and can better than ever "remedy existing grievances, and obviate difficulties for the "future."—*Address of Assembly to the Governor in November*, 1828. *Commons' Paper*, No. 73. 1830.

* Lord Aberdeen's Minute of 1835, contained in the Commons' Paper, No. 113. of 1836. page 36. Printed also in Appendix to this Statement.

and brought to a head in the Report to the House of Commons; and, if the government proved an honest desire to comply with that report, it might reasonably expect some confidence and some patience, should occasion arise to require its consideration of further matters of complaint.

The Government of 1829 and 1830 showed a deference to the advice of the Committee, and brought in a Bill with a view to giving effect to its opinions on finance, but went out of office before it could be carried. The constant and engrossing debates on the Catholic Relief Bill had prevented the introduction of the measure in 1829. It was interrupted in the first session of 1830, by the demise of the Crown. In the second session of 1830 it will be remembered that an early change of administration took place.

The Assembly proceeded in 1831 to make a renewed statement of its grievances, adding several fresh subjects of consideration. These resolutions were moved by Mr. Neilson, the most prominent of the delegates in 1828; they were temperately expressed, and for the most part well founded *; and they were received by the governor with respect and good-will. Lord Ripon replied by a dispatch, announcing some concessions as made, and others as intended, which communication was extremely well received by the Assembly.

* All these proceedings may be seen in the Evidence before Select Committee of 1834. Printed No. 96. of 1837. pp. 35. 37. 39, 40, and 41.

In 1832, the time arrived when the government could confidently say, that there was not one of the recommendations of the Canada Committee, depending on the power of the Crown, which was not fulfilled; that there was not one depending on the British Parliament which was not accomplished, and more than accomplished; and that so far as any of the recommendations required the co-operation of the Provincial Legislature, the assent of the Government had been freely promised to any measures they would adopt for the purpose. Strange to say, however, several of this last class of recommendations remain unexecuted. So long as grievances afforded a topic of declamation against the Government, they were pursued with all eagerness and impetuosity; when no more could be done with them than relieve the people from an alleged evil, the Assembly suddenly became quite lukewarm and indifferent to the subject. This of course could not happen in any country where the voters exercised a salutary control over their representatives; but in Lower Canada the misfortune is that the constituency is dead to any knowledge or judgment of politics. The Members of Assembly are men whose power is prodigious, whose responsibility is a name.*

* One example of the remark just made is the important subject of Clergy Reserves, which was got rid of in the first year it was mentioned to the Assembly, by a very poor pretext (in proof, see Lord Aberdeen's Minute in the Appendix), and was never again taken into consideration by them. Another

It would too much encumber the text of this short review of the case to insert the whole demonstration of the Canada Committee's recommendations' having been carried into effect by the Government to the utmost of its power; but the most detailed and scrupulous proof of this fact was embodied in a minute of Lord Aberdeen's, since printed for Parliament, which will be found in the Appendix. This minute was adopted by Lord Glenelg and annexed to his instructions to the Canada Commission, by whom also its correctness has been vouched. In fact it carries its own evidence with it. No man can read it and doubt how generously, how emulously as it were, the British Government has striven even to anticipate and go before both the wishes of the Canadians and the recommendations of their friends.

Without going into the entire case, a few samples may be adduced from the most extensive and momentous of the points at issue. The reader will recollect that on the correctness of the statement he may satisfy himself by the official Minute in the

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example is the security for public accountants, on which, although very liberal and convenient arrangements for the purpose were offered to them by the Imperial Government, they never so much as moved again. They literally never broke silence, from the day when a cure for the former evils on this head was held out to their acceptance. The Government had to supply their neglect, by devising another scheme more within its own competence to execute.

Appendix, which has long been published to Parliament and the world.

The Committee had advised that the duties under the 14 Geo. 3., and all the other revenues of the Province (except the casual and territorial revenue of the Crown), should be placed under the control of the Assembly, provided they would grant a Civil List to support the judges and some other principal officers. The proceeds of the 14 Geo. 3. were given up, by act of parliament*, *without* waiting for a Civil List; which accordingly from that time to this the Assembly have peremptorily refused to grant. †

* 1 & 2 Will. 4. c. 23.

† Yet they had stated, in a resolution passed on the 6th of December, 1828, and communicated to the Governor, that on a permanent settlement of financial affairs with their consent, "it "would be expedient to render the Governor, the Judges, and "the Executive Counsellors, independent of the annual vote of "this House, to the extent of their present salaries." What was wanting now, if the Assembly did not designedly evade it, to a permanent settlement? Every thing had been given up to them. Even the casual and territorial revenue, though excepted by the recommendation of the Committee, was included, after Lord Gosford went to the Province, amongst the concessions, of which only the mode and conditions remained to be considered; yet without stopping to hear them, the Assembly made an answer that very session showing they would come to no terms.

This not very bright page in the history of the Assembly has been the occasion of much controversy on the part of their friends, who almost indignantly reply to every complaint, "that "there was no compact." Certainly there was no compact, for there were not two contracting parties. Acting with the liberality that they did, the Ministers appear to have had re-

The reservation of extensive tracts of waste lands for the clergy having become a heavy inconvenience, the Committee recommended that their *improvement* should be attempted, by getting persons upon them who would cultivate them. The Government, going beyond this, offered to concur in an act to give them up altogether and throw them into the general mass of wild lands to be dealt with like the rest. But when the means of redressing the grievance came into their hands, the Assembly left it alone. It may be mentioned in passing that the Government has since in great measure supplied a remedy itself, through the instrumentality of other powers, which fortunately it happened to have from Parliament.

A remark was made by the Committee on the inconveniences of the similar reservations termed the "Crown Reserves." The system of Crown Reserves is abolished. In this case the Assembly's concurrence was not wanted, and the evil is cured.

Improvidence and partiality having been complained of in the granting of the waste lands, and consequent want of cultivation, the Committee suggested a tax on waste lands. This is an expe-

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course to nothing in the nature of "*do ut des.*"—They did not employ an attorney. Probably they only found an assertion on the Journals of the Assembly, and believed it. But let any man of honour look at that assertion, as quoted at the beginning of this note, and then answer the question, what must have been the result, if the Assembly had been dealing in good faith and sincerity?

dient of which the advantages are much questioned amongst colonists. At any rate the measure would have been one to originate with the Assembly. But the Government has relinquished altogether the power of granting land, and substituted for it, a system of sale by free and public competition, which affords a self-acting security against prodigality and an absolute bar to favouritism.

The Committee advised that certain landed estates which had devolved to the Crown from the Jesuits should be devoted to education. Not merely has this been done, but the whole control of their application to that purpose has been gratuitously transferred to the Assembly.

The Committee, for reasons which they explained, came to the conclusion that there were grounds why the judges should not be made independent of the Crown; but nevertheless advised that their almost sacred office should not be made dependent on an annual vote for its remuneration. It will be remembered that the whole of this Report was assented to by the Assembly. Now the Government, contrary to the opinion of the Committee, has offered to make the judges independent of the Crown, but the House of Assembly has refused to concur in the measure by rendering them independent of its own vote. It once passed a bill nominally for that purpose, but in reality foreign to the subject in one part, and insufficient in the rest; though the writer wishes in candour to state that he does not believe the defect to

have been intentional. When the imperfection was pointed out, the House changed its ground, and adopted the opinion * that as there was no arrangement to which it would consent for a court to try impeachments of public officers, it was preferable that the judges should remain for the present dependent upon the Assembly year by year for their salaries.

The Committee recommended, as to the Legislative Council, that the Judges (except the Chief Justice) should not sit in it; that a more independent character should be given to that body; and that a majority of its members should not consist of persons holding office at the pleasure of the Crown. The Judges have ceased to sit: the office-holders were reduced at the date of Lord Aberdeen's Minute to seven out of thirty-five; and of eighteen new Counsellors, made from the date of the Report to the end of Lord Aylmer's government, eleven were French Canadians, and none held offices. Every attempt to deny these gentlemen's independence of the Crown has been triumphantly refuted. As the subject is one which allows more room for vague assertion than most of the points in this irrefragable case of the Government, it has always been a favourite topic with the advocates of the Assembly: but any one who may have a taste for seeing the answers of a shifting witness successfully pursued and exposed by well

* Mr. Morin, the Assembly's Delegate before the Committee of 1834. pp. 101, 102.

put questions, can satisfy himself on the present head by referring to the cross-examination of M. Morin, the Assembly's delegate before the Committee of 1834. It would be quite superfluous to add a word to that.*

Having thus given some specimens of the spirit in which the recommendations of the Canada Committee were disposed of, there is one more circumstance which is well worthy of remark before leaving the subject. Throughout the period until the preceding measures became known, the same party which had been at the head of the petitioners' cause in 1828, remained knit together. They had all concurred in those cordial and praiseworthy acknowledgments of the Committee's liberality which have been above quoted; but none of them were men to be satisfied with words: they awaited deeds, and in the meanwhile remained a firm phalanx arrayed against the Government. It was afterwards, upon seeing the adoption of proceedings completely in accordance with the original demands of the people, that all the ablest and most prominent members of the old opposition refused to enter on the inauspicious career then first commenced, and left Mr. Papineau standing almost alone, the only public character of

* Commons' Paper, No. 96. 1837. p. 102, 103, 104, and 105. — Further changes, operating in the same direction, have been made since Lord Aylmer's retirement. This subject will be reverted to in discussing the question of the Elective Council, when also will be noticed the assertion that the politics of the Members added to the Council constituted an objection to them.

any previous mark to head the majority which unfortunately the great personal influence of that strong-willed man, and the too easy nature of several of his countrymen of the same race, enabled him still to hold together. Amongst those who thus separated themselves from the extravagant courses into which the Assembly now hurried, was John Neilson*,—a man than whom there breathes not one more honest on this side of the ocean or that. He who for several years was the very Atlas of the Assembly, carrying them through all the more laborious part of their duties and keeping them within the limits which led to success, by that vigorous good sense of which the want has since been so lamentably displayed,—Neilson, whose shrewd and ready understanding it was that may be said to have gained with the Committee of 1828 the cause both of the Assembly and of the people (for at that time the interest pursued by the one coincided with that of the other) was obliged to renounce them at last, and fall back into private life. He is now a sad spectator of the misfortunes of his country. To any one who knows Canada, many other names, such as Stuart, Cuvillier (one of the delegates in 1828), Quesnel, and Young, will recall the nature of the further *purification* which the Assembly had to undergo, before its reckless chieftain could force the Colony into a quarrel, with no escape but a civil war.

* It is needless to say a very different person from Dr. Wolfred Nelson, the rebel, and no connection of his.

To trace the steps by which this dismal end has been consummated, is what now remains to be done. We have already reviewed the period up to 1828, when all the prior grievances of the Canadians were collected and brought to a head, as it were, in a Report, which they acknowledged to be a complete and faithful account of their wants; we have seen the accomplishment of the next period, ending in 1832, when all these grievances were removed, so far as Government was concerned, and when moreover, it may be added (for new topics are now coming on the scene), the Assembly had overruled two recent motions for altering or abolishing the Council, and passed an Address*, expressing their hope to transmit the British Constitution unimpaired to posterity. The reader has now to be introduced to the third and last epoch in Canadian affairs, and to be informed how, in five short years from the preceding date, the Assembly have refused to vote another shilling of public money or ever to do business again as a branch of the legislature, and have thereby provoked a civil war, because the same British Constitution they spoke of before is not abolished and the Council not rendered elective.

During 1833, 1834, and 1835, the Assembly engaged in various local disputes.

In 1833 they for the first time expressed their wish for a change in the Constitution of the Legislative Council.

* Signed "Louis Joseph Papineau, Speaker."

They passed *ninety-two* fresh resolutions of grievance in 1834, which were embodied in Petitions to both Houses of Parliament. When the celebrated "*ninety-two grievances*" are mentioned, it must not be supposed that such was the number of the matters of complaint that were alleged. The meaning is, that *ninety-two paragraphs* were written; but how many distinct complaints they involved, or what complaint at all some of them were designed to import, it would be ingenious to say. Several of the resolutions were purely declamatory; several more were repetitions of one another; a few, less grim than the rest, wafted a compliment to some Member of Parliament in England; while here and there a resolution was devoted to a sly hit at an individual, not always effected with perfect regard for correctness in the means. It was, to be sure, a strange miscellany to send home to Parliament as an exposition of a country's griefs. If any man wished a short method of convincing himself of the loss of ability which the ruling party in the Assembly had suffered by the secession of its favourite members of former days, he could not do better than read this curious document.*

No appropriation to the public service was made during any of these years. In the first of them, the Legislative Council had thrown out the Supply Bill, because it contained conditions of the nature styled in Parliamentary language "Tacks," which

* It was printed in 1836. No. 392. p. 16.

were deemed unconstitutional; in the two succeeding years, the Assembly did not grant the supplies. And it may be remarked here, that when the supplies are refused in Lower Canada, the effect is not confined to the public officers; but the roads, the schools, the very maintenance of the prisoners in the gaols, and all the most common expenses of the conservation of the peace, are involved in the same fate. There is nothing in the nature of County-Rates. Every thing depends on the grant of the Assembly. The Judges' salaries stop with the rest; and were the Bench of Canada as corrupt as it has been scandalously and falsely said to be, the administration of justice might well indeed have been brought to a fearful pass, when the Judges were left for years without their income. This indiscriminate operation of the measure would, in a wholesome state of political society, be the best check on its exercise; but it has already been explained that unhappily in Lower Canada there is no effective responsibility of the Representatives to their Constituents; and if a factious Assembly wished to bring odium on the Government, it could not do better than create confusion by whatever means, secure that if once the people felt suffering (which with every ingenuity it must be difficult to bring home to them in a country so favoured as Lower Canada), it would be easy to cast the blame on the Government.

A Committee of the House of Commons was

appointed in 1834, to investigate the new list of complaints from the Colony. They had an absolutely unreserved communication of every official paper belonging to that branch of their inquiries which they conducted through the medium of documents; they heard Mr. Morin, the Assembly's Delegate for the purpose, during six days, and received from him evidence covering about 80 pages of their Minutes; and with the exception of a few immaterial questions to the gentleman who produced the papers from the Colonial Office, they did not orally examine more than three other witnesses in all. The following is the substance of the Report which they made to the House in June 1834*:—

That the most earnest anxiety had existed on the part of the Home Government, to carry into effect the suggestions of the Committee of 1828; and that the endeavours of the Government to that end had been unremitting, and guided by the desire, in all cases, to promote the interest of the Colony; and that in several important particulars, their endeavours had been completely successful†;

* Commons Paper, No. 440., 1834.

† If the reader have ever been startled by the singular strength of the case which the humble individual who has been guiding him through this thicket of complaints, has from time to time had to exhibit to him, this confirmation of the result of his statements by authority of a Committee of the House of Commons, with Mr. Roebuck for one of its members, and Mr. Morin its almost only oral witness, may perhaps reassure him. Were there no higher motives, the writer knows far too well

that in others, however, they had not been attended with that success which might have been anticipated; heats and animosities and differences having arisen; that it appeared to the Committee some mutual misconception had prevailed; and that they believed they should best discharge their duty by withholding any further opinion on the points in dispute; and were persuaded the practical measures for the future administration of Lower Canada might best be left to the mature consideration of the Government responsible for their adoption and execution.

This Report bears strong internal marks of having been a compromise, with the hope of an amicable adjustment. Notice had been given in Parliament of a Bill for suspending the operation of the Act which had given up the Revenues under the 14 Geo. 3. c. 88. to the Assembly. Mr. Spring Rice, then recently appointed Colonial Secretary, has stated in a subsequent debate in the House of Commons, 15th May 1835, that he was unwilling to proceed with this Bill, and had expressed that feeling to the Delegates of the Assembly in this country; and added, that if he could obtain from the Canadian Assembly an unconditional Supply Bill for the two years that were due, he would en-

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how much it is the interest of the adversaries of Great Britain in this matter to perplex the case, to think of affording them an excuse, by his example, for any deviation from the most minute and scrupulous accuracy.

deavour to effect a satisfactory arrangement; and to this proposal, as Mr. Spring Rice understood, those gentlemen answered, that they thought it would be satisfactory to the House of Assembly. Mr. Rice then dropped the Bill that had been announced in Parliament; and in order to relieve the pressing wants of the public service, he authorised an issue of 31,000*l.* from British funds as an advance to discharge one year's salaries*, feeling confident that the first Act of the Assembly on meeting would be to grant the supplies and replace this advance.

But the Assembly, as has been seen, made no grant in 1835. They complained of the issue which had been made from British funds, and shortly afterwards separated.

These events have been passed over as rapidly as could be, consistently with the necessity of guarding against undue representations by others, because, as will presently appear, the quarrel has since been placed by the Assembly on a distinct ground, upon which alone must depend the right or the wrong of the existing conflict. As the grievances earlier than 1828 have been shown to have been rendered obsolete by being redressed, so it may be stated that the local and temporary disputes of 1833, 1834, and 1835 have expired, the House of Assembly having had its own way in all the most prominent of them.

* Despatch of 27th September, 1834. Commons' Paper, No. 211. 1835.

Lord Gosford, in the capacity of Governor and head of a Commission of Inquiry which went out with him, arrived in the province, in August, 1835. The candid and friendly tone of his first speech to the Legislature, the practical concessions by which it was accompanied, and his personal demeanor afterwards, made a considerable impression. Several of the majority of the Assembly began to think whether it might not be fitting to meet a persevering course of kindness and compliance with some liberality in return. They also discussed it as a question of policy. It is well known to many, that the tendency of thwarting the British Government in this final endeavour to gain the Canadians through gentle and conciliatory means,—the tendency to force the Mother-Country against her will into a quarrel which might end in separation, became distinctly foreseen, and was debated at this time amongst the principal of Mr. Papineau's supporters. It is well known that several of them insisted on the wisdom of rather aiming at the preservation of a connection which the backwardness of their people and the protection at present enjoyed for their church and institutions, rendered far better suited to them than independence on a democratic basis. The result was that the opinion of those who advocated this view did for a short time prevail. It became an understood thing that the supplies were to be granted. At this very moment, however, extracts having been published in the Legislature of Upper Canada, of passages

from the Commissioners' instructions which had been appended to the instructions of Sir Francis Head, Mr. Papineau, with great dexterity, took advantage of the circumstance to rally his party. He asserted that these extracts were inconsistent with the declarations which had been made by the Commissioners: he maintained that they betrayed an unpardonable slowness and hesitation to adopt the sweeping constitutional changes called for by the Assembly; and he indulged, *more suo*, in fierce invectives against all the authorities, both at home and in the Province, whom he represented as guilty of wilful deceit. The end was that on the 26th of February 1836, the House was carried into passing an address to the King*, which exactly brought this quarrel to the incurable pass, that to some of its members, was, perhaps, anything but an objection to the measure.

They demanded that the Legislative Council should be rendered elective; the Executive Council converted into a ministry, responsible to the Assembly; the Tenures Act and Land Company's Act repealed; the Crown revenues surrendered unconditionally; and the management of the waste lands given up to them.† They affirmed that in

* Commons' Papers, 1837. No. 51. p. 13.

† This last demand is plainly involved in some parts of the Address; but by one of those artifices which, to the discredit of the individual who writes them, are not uncommon in the Papers of the Assembly in recent years, a different proposition is set forth in another part of their Address. These documents have of late been full of hidden meanings, double meanings, or, as in the

the whole of these demands equally they were resolved to persevere, and that until the satisfaction of them, they would not pay the arrears, nor make any future provision for the wants of Government; but as a special exception (which they desired might not be taken as a precedent) they offered on the present occasion a supply for six months, in order that the British Government and Parliament might have time to decide on the fundamental changes of the Constitution and the alterations of public and private property which they had stated their will to have.

Upon this the Commission of Inquiry made a report not unsuited to the crisis.* They described the embarrassment and intense suffering created by the long-protracted denial of the ordinary supplies. They pointed out the new ground taken up by the Assembly; that hitherto the supplies had failed through differences with the Governor for the time being, or by the refusal to pay the contingent charges of the House; but that quite a different position was now assumed:—"Your Lordship will "not perceive," they said, "amongst the grounds "assigned for prolonging the financial difficulties

present case, opposite meanings thrown into different parts of a long statement, so that the one may be the measure of the Assembly's claims when a settlement is attempted, the other be pleaded to the British Public if they are tasked with their unreasonableness. Any man who has had to make a study of their addresses will recognise the truth of this remark.

* Second Report, p. 87. of Commons' Paper, No. 50. 1837.

" any complaint against the existing provincial " Administration, or the assertion of any demerit " in the parties who will continue to be deprived " of their lawful remuneration. No local cause of " quarrel is alleged, of which the settlement might " be indispensable before the public business " could proceed; on the contrary it is stated " openly and without disguise, that changes of a " political nature are the end in view, and that " until certain acts be done, competent to no other " authority than the Imperial Parliament and " comprising organic changes in the Constitution " by virtue of which the Assembly itself exists, " that House will never make another pecuniary " grant to the Government."

The Commissioners threw out a remark on the oppressiveness with which the public servants, no parties to the contest, were perseveringly afflicted, as mere instruments, through whose sufferings to extort from others concessions totally independent of their own will to grant or to refuse. They then stated the reasons why it was impossible to accede to the most urgent of the Assembly's demands; and as that House had left no option between an instantaneous and unqualified compliance with all its own wishes, on the one hand, or on the other a recourse to some other means than their liberality for the maintenance of those administrative and judicial establishments without which society cannot be held together, the Commissioners with regret acquiesced in the necessity

thus created by the Assembly itself. They advised a suspension by Parliament of the act which had given up the duties under the 14 Geo. 3. c. 88.

So reluctant, however, was the Government to adopt any measure of this nature, that, as there appeared to have been some misconception of the effect of the Commissioners' instructions, the Governor was directed to convene the Assembly again, and to lay before them the whole instructions, in order to try whether they could be influenced by seeing how completely in good faith those documents had been drawn *; and to afford them one more opportunity of avoiding a hazardous collision. The Assembly answered that they found nothing in them to change the views they had expressed on the important subjects of their former address. They persisted in the same demands. And not merely did they on this occasion refuse the supplies †, but they further stated that they deemed it incumbent on them to "adjourn their deliberations" until Her Majesty's Government should do as they wished. The Governor, mild, conciliatory, untiring as he had been in all good offices towards the Assembly, and in all good hopes, could not refrain on this occasion from a sorrowful, though temperate reflection on the disastrous resolution they had thus embraced. "The determination," he said, "you express "never to resume your functions under the exist-

* Commons' Paper, 51. 1837. p. 29. and 35.

† Commons' Paper, 51. 1837. p. 38.

" ing Constitution, naturally deprives the country " of a domestic Legislature, and places it in a situ- " ation in which the greatest embarrassments must " be felt, until a remedy can be applied by the " supreme authorities of the empire."

In fact can any man doubt that this proceeding of the Assembly virtually declared a dissolution of the existing form of Government? Can any man doubt that when they stated that unless certain changes were forthwith accorded, some of which, as will be shown presently, were absolutely incompatible with the relations between the parent-state and a colony, and others with justice and honour, —when they stated that unless these were at once effected, they would no more do their part in the legislature of a country where the most important laws are temporary and continually expiring, and where the public revenues had already, by their obstinacy, been for five years locked up,—when this determination was declared, can any man doubt either that the Imperial Government must at that time have stepped in and at least supplied the money to carry on the institutions without which organised communities cannot exist, or else that the society must have been resolved into its elements, and Great Britain been disgraced by one of her possessions falling into a state of anarchy, equally without the means of making laws or of administering them, or of affording to the King's subjects the common protections of civilised life?

Lord John Russell brought in his Resolutions

on the 6th of March 1837, in which, after stating how far the Mother-Country would, and how far she would not, comply with the demands of the Assembly, he proposed that Parliament should empower the Governor to take from the revenues in the hands of the Receiver-General such sum as was necessary to defray the accumulated arrears up to the 10th of April, 1837; but that at the same time, the King's Government should be authorised, in case the Provincial legislature thought fit to grant a civil list for defraying the charges of the administration of justice and the salaries of certain of the principal officers of Government, to give up the net proceeds of the hereditary, casual, and territorial revenues of the Crown. The resolutions passed both Houses.

Again the legislature was convened. Again the Governor entreated the Assembly to reconsider the question and dispense with the necessity of his exercising the authority conferred on him by Parliament. Again they would consent to nothing to avert the collision. This was in August 1837. In November the sword was drawn.

And now it may be asked with confidence, before even going into the arguments which will speedily follow, can it be possible that there should have been circumstances here to justify a rebellion? Is it possible that the refusal (in some of the cases, indeed, scarcely more than the postponement or at most the qualified refusal) of demands which were never heard of until within the last four years,

and of which the most prominent were distinctly repudiated by the Assembly immediately before that period,—is it possible that the mere fact of not having been able to carry all these demands equally in these four years, can be a sufficient excuse for having first *wrenched* the Government out of its ordinary course, and then summoned to revolt, on that pretext, a previously inoffensive and peaceful people, whose laws have been preserved to them, whose language has been put on an equality with English, whose Church has been upheld, and who do not know what it is to pay a direct tax? Even if the demands were reasonable, which it will presently be shewn that they are not, but on the contrary some of them absolutely irreconcilable with the essentials of Colonial connexion, and others with the no less indispensable conditions of justice, could a few years' resistance to such extensive changes—a pause—a space filled up with all manner of other concessions—a check in the career of concession occurring only at the point where it was proposed to subvert one Constitution and establish another—could this be ground enough for a rebellion? And now let us proceed to the examination of the objects which have been prosecuted at such a price.

The Elective Council, as being the subject which may require to be commented upon at most length, shall be reserved for the last.

A Ministry responsible to the Assembly, if it be a benefit, is one which from its nature must be

simultaneous with the independence of the country. This point is shortly put in a passage in the Commissioners' Report on the Executive Council.* "The Council having to answer for the course of "Government, must also in justice be allowed to "control it; the responsibility therefore of the "Governor to His Majesty must also cease; and "the very functions of Governor, instead of being "discharged by the person expressly nominated "for that high trust, would in reality be divided "among such gentlemen, as from time to time "might be carried into the Council by the pleasure "of the Assembly. The course of affairs would de- "pend exclusively on the revolutions of party within "the Province. All union with the Empire through "the head of the Executive would be at an end: "the country in short would be virtually independ- "ent; and if this be the object aimed at, it ought "to be put in its proper light and argued on its pro- "per grounds, and not disguised under the plausible "demand of assimilating the Constitution of these "Provinces to that of the Mother-Country." The truth is that every state of being has its inherent conditions, which must be taken, the good with the bad. A time might arise when it should be discussed whether the connection between the Parent-State and the Colony should be continued; but so long as it is beneficial for that connection to endure, the impracticability of a local Cabinet

* Commons' Papers, No. 50. 1837. p. 110.

Council must be accepted as one of its necessary attributes.

The Tenures Act, 6. Geo. 4. c. 59. was principally designed to enable persons, if they wished it, to change the tenure under the feudal laws of France for tenure in free and common socage. It also contained a declaratory clause, determining a doubtful question of law, under which declaration a multitude of rights must now be existing in the parts of the Province inhabited by people of English origin. Imperfections were pointed out in this statute. What then was the course of the British Government? They recommended and carried an Act of Parliament, leaving the whole subject to be dealt with by the Provincial Legislation at its own pleasure.* It is maintained, they said, that we ought not to interfere in the internal concerns of the Province, and that we are apt to fall into errors in doing so, and we do not deny it: but we will not repeat the mistake. Because an Act confessedly beneficial in the end it proposes, is not so perfect as could be wished in some of its contrivances towards that end, we will not on that account repeal it absolutely, without regard to the confusion thus to be thrown amongst a great mass of rights which have come into existence under one of its clauses. We will leave the subject to the Legislative authorities on the spot. But here supervened an objection, very characteristic of the

* 1 Will. 4. c. 20.

Assembly of Lower Canada, on which we may quote the words of the Commissioners of Inquiry : —" It has been objected that by leaving the subject " to the Provincial Legislature, the wishes of the " Assembly are liable to be defeated by a contrary " opinion in the Council. This, however, is the " very nature and condition of their existence. So " long as the Legislature is preserved in its present " form, the same credit for good intentions must be " allowed to one branch as to another, and the " naked fact of disagreement cannot be taken as a " presumption against either." * This, however, is what the majority of the Assembly have never been able to comprehend. With them every obstacle is an abomination ; every attempt at opposition a crime :—delay they cannot brook ; inquiry they will not allow. Were their views ever brought into perfect action, those expressive lines in Troilus and Cressida would be verified :

" Then every thing includes itself in Power,
" Power into Will, Will into Appetite,
" And Appetite, an universal wolf,
" So seconded with will and power,
" Must make perforce an universal prey,
" And, last, eat up himself."

The plain answer to the grievance is, that on this subject the provincial Legislature has been authorised to deal as it pleases with the enactments of the Imperial Parliament, and that it is not the

* Commons' Papers, No. 50. 1837. p. 92.

fault of the Home Government if the Assembly, from the apprehension of opposition in the Council, has preferred complaining of those enactments, to amending them.*

On the repeal of the Land Company's Act, it will probably suffice to quote the following passage from the Commissioners' second Report†:—"We "have not a moment's doubt in stating that the "call for a repeal of the privileges of the existing "Company is inadmissible. The nature of the "contract with that body seems to have been to a "certain degree erroneously conceived by the "framers of the address. But whatever might be "its defects, to cancel, from political motives, the "title to a large tract of property, lawfully ac-"quired, and on which money has already been "expended, would be an act of confiscation enough "to destroy every feeling of security in the Pro-"vince." Whosoever wishes to see what benefits have been conferred on the district where they are settled by the Company which the Assembly would so unceremoniously strip of its rights, may find them stated, after personal observation, at the

* They have never actually encountered the opposition of the Council in amending the Imperial enactments. It is true, that in 1832, they passed a Bill, which, as Mr. Morin described it, "went to repeal the possibility of obtaining a mutation under "the Tenures Act." This would have been to defeat absolutely an end, which every one admits to have been good, if properly sought; and it can constitute no presumption against the Council, that they threw the Bill out in 1832, and again in 1836.

† Commons' Paper, No. 50. 1837. p. 92.

thirtieth page of the Commissioners' General Report.

No argument can be requisite to show that the administration of the waste lands could not with reason be claimed by the Assembly. The whole world acknowledges and must easily understand the necessity of separating executive from legislative functions. It has already been remarked in a note*, that in one part of the Address of the 26th of February, 1836, the Assembly disavows the claim on this head which is certainly involved in another part of the same Address. The Commissioners, after briefly noticing this discrepancy, conclude as follows:—"It is enough for us to observe "that we entirely adhere to the principle laid down "by your Lordship; namely, that the general rules "of managing the Crown lands may with propriety "be prescribed by the Legislature; but that their "application must be confined to the executive; "and if this be the view adopted by the Assembly, "we are glad that no difference of opinion exists "on the subject." †

These quotations from the Commissioners' Reports have been freely used in the immediately preceding pages, because they offered a short and convenient statement of the points to be treated of, and also because in a publication of the present nature there seems an advantage in drawing the

* Page 26.

† Commons' Papers, No. 50. p. 92.

illustrations, as much as possible, from official and responsible sources. It remains to speak of the much-vexed question of the Elective Council. Here also we may borrow largely from the Commissioners' Reports; but one or two preliminary remarks will be necessary to facilitate the understanding of the state of the country, and of the case at the time they wrote.

The House of Assembly was unquestionably the most powerful body in the Province. The Constitution conferred upon it great powers: it had used these powers with no sparing hand, and had shown a disposition to stretch them to the utmost limits, sometimes doing it in a manner calculated to strike terror into individuals, and destroy all liberty of speech, or independence of action.* The situation of the Province moreover was such that all this authority must fall exclusively into the hands of one of the two races, into which the population was divided. These circumstances, nevertheless, grew out of the Constitution, which no one yet, except the Assembly itself, had required

* The dismissal of a Judge had been demanded, chiefly on the ground that some years before, previously to his appointment to office, he expressed opinions on matters of law and politics, not agreeable to the views of the majority of the Assembly. And the Government having declined to remove him, his salary was struck out of a Supply Bill then passing through the House. A confidential law adviser of the Crown was reprimanded at the Bar for discharging his official duty, by reporting his opinion on a case referred to him by the Governor. The opinion happened to be not agreeable to the Assembly.

to be altered; and although many persons of various classes viewed with alarm the power and the increasing pretensions of the Assembly, they had been willing hitherto to trust to the general effect of the institutions of Great Britain, to protect them against any serious oppression. But if, in addition to the power thus largely accumulated already in the same hands, the existing form of Government had been subverted, not for the purpose of curtailing it, but on the contrary in order to throw more into the scale with it, and seek a temporary ease by gratifying the appetite for dominion in one overweening body, the discontent and distrust which might be expected to arise would have been immeasurable.

Numbers would have been able to say, that when they had embarked their fortunes in this country, they had regarded amongst its inconveniences the existence of a very powerful Assembly, necessarily the instrument of the distinct race which was the more numerous in the Colony; but that, in computing the good and the evil, they looked to the British Constitution to correct many hazards; and that in a British Province they presumed they might count on the duration of this as long as the connection with the Mother-Country should last. Others, they would have said, might clamour for changes and experiments; but they asked no exertion in their favour: all they asked was to be left alone, and that England would abide by her own laws, and by the plighted faith of forty years. If

after so many other examples of submission to the demands of the Assembly, the Government should be unable even to assert in the Colony the institutions of the Mother-Country, the power of the Assembly would, by men who were entitled to hold such language as above described, have been deemed beyond all bounds. The last barrier against their encroachments would have been supposed to be thrown down; and one important class of the inhabitants of the Colony would have been rendered desperate.

These views, moreover, must have been much strengthened by adverting to the little control of any kind that exists over the actions of the Assembly. Although for nearly half a century the inhabitants of Lower Canada had possessed the privilege of electing one of the Houses of Legislation, the greater part of them, certainly, had not taken that interest in the ordinary course of public affairs, or enjoyed that diffusion of the simpler elements of education, without which no system could be successful that should throw all the higher branches of Government into the hands of the people. Unable to read and write, scattered over a vast territory, and never approaching the seat of Government, a population, such as that of Lower Canada, must depend, even for the knowledge of facts, upon the words of those delegates whom they ought to be able to call to account. The representative power is left without the only responsibility provided for it by the Constitution; and the tendency

too surely is, that a few should wield the pretended authority of the many, an oligarchy reign in the name of the people. To any one who has visited Lower Canada, this is matter not of speculation, but of observation. Taken in a smaller circle, the accordance of similar privileges to the people would have been excellent. The election of officers in a parish or township in a county, where the evil of every careless or interested choice would appear before the voters in a palpable and corporeal shape, would have been a truly efficient means of training a people rather new to the duties of freemen. But in Lower Canada we began by giving them a popular power in one of its highest forms alone; — the scene in which their delegate acts, remote; the consequences of his conduct distant in time and place, and difficult to disentangle from the general mass of events; in short, the whole opportunity of experience such as presupposes a high state of enlightenment: and when this experiment has signally failed in creating a lively and accessible public opinion in Lower Canada, the Government has found itself called upon to heap on the people more civic responsibilities and duties, of the nature of those which already lie so heavily on them.

The following are extracts of some of the principal passages in which the Commissioners of Inquiry gave their opinion against acceding to the demand for an Elective Council: —

"The division of parties, confirmed as it is, and

" rendered conspicuous and more likely to last,
" by a difference of race, — the violence that has
" been aroused, — the almost uncontrollable power
" the measure would confer on the party which
" has lately risen into so great ascendancy, but
" has not yet, we fear, learned to enjoy its advan-
" tage with moderation, — all are facts which com-
" bine to make us think it undesirable that an
" Elective Council should be bestowed upon Lower
" Canada. The concession of it in the present
" excited state of public feeling would afford a
" triumph to one portion of the population, which,
" we have no hesitation in saying, would be fraught
" with danger.

" The maintenance, on the other hand, of the
" principle on which the Council is actually con-
" stituted, affords no triumph to either party; it is
" but the maintenance of that Constitution which,
" five years ago, all parties in the Province were
" emulous in praising; it is but the maintenance,
" by England, in one of her favoured colonies, of
" institutions modelled, as far as they can be, on
" her own. Great Britain, in giving those institu-
" tions to Canada, intended to bestow upon it the
" best gift that was in her power; and it is not
" yet proved, at least we have yet seen no proof,
" that, under existing circumstances, a benefit
" would be derived from changing them. * * * * *

" Turning now to the consequences of an Elec-
" tive Council, we are not to suppose that the
" party now so violent in demanding it would sit

" down in quiet thankfulness and submission if it " were granted. It is looked to, we must consider, " not as an empty name, but rather as a means to- " wards further ends. Neither are we left entirely " in the dark as to what those ends may be. We " will not enter upon the field of conjecture as to " the various steps which might mark the progress " of their demands, but simply point out that two " at least have already been announced, which, it " appears to us, whilst England has a shadow of " authority, it must be impossible, because dis- " honourable, to grant.

" The first is the repeal of the Tenures Act, " without a guarantee for the titles that have been " acquired under it; the second, the abrogation " of the charter of the Land Company: and to " these, though it be of minor importance, we " may add the sacrifice of three or four individuals " to whom, either as compensation for abolition of " office, or in consideration of meritorious services " within the Province, pensions have been assigned " out of Canadian funds by the Crown. It is " true, indeed, as we have heard suggested by " some of those who prefer such demands, that " England might make compensation to the " parties injured, and that the amount of such " compensation would be too small to be felt; but " unless that can be proved, which we think can- " not—namely, that the power of the British " Parliament and of the King was exceeded in " any of these acts, we can imagine nothing more

" derogatory to the supreme authority of the na-
" tion than receding from them on such dictation."

The author of these remarks by no means wishes to deny that there have been faults, both in the composition and in the conduct of the Legislative Council under its present constitution. He has already expressed his opinion that in almost all the earlier controversies between the different authorities of the Province, the Assembly was decidedly in the right; and he doubts not that the Legislative Council at that time partook in the errors of the Government with which it was far too closely connected. Neither does he mean to say that, in later times, it has been free from the party impulses to which all public bodies are liable, or that it has proved itself impenetrably insensible to the constant hostility of the Assembly. There has been a mutual struggle between the two bodies, and neither probably has been impeccable. It is to be observed, however, that the mere rejection of bills can constitute no presumption against the one or the other of the Houses, without an examination of the details, and without a reference, not merely to the professed end of each bill, but to the means for carrying it into effect. It is, moreover, notorious that bills have been habitually sent up in masses into the Legislative Council at the latest moment of a session, when there has been no quorum of Assembly below to assent to the smallest amendment, not even of the verbal errors which were frequent in these bills; and that the most

important measures have been amongst those thus kept back for the end of the session. Yet the loss of such is sedulously charged to the account of the Council, in the ample list issued by those gentlemen in the Lower Chamber, who, though they could not part with their bills till the last, then always sent them up incomplete. Whatever the faults in the composition of the Council formerly, the Author believes that the additions subsequent to 1828 were made in good faith, and that Lord Gosford's further appointments, recently made, still further invest the Council with that character of independence and liberality which must be understood to be the main point desired. In the Quebec Sheet Almanack for this year there appear the names of forty legislative councillors. Of the active and prominent men amongst them, the number who have been known throughout their lives as the friends of popular rights (but not the advocates of rebellion) amounts to five; the number of leading persons on the other side may be stated to be the same. Again, the total number of men considered of liberal politics fully equals one half of the Council, with this distinction, that most of them are more lately appointed, and comparatively young men; while several of the others, from infirmity or other causes, never attend, and must in the course of nature shortly fall off the list. The number of French-Canadian members and of English-Canadian members is exactly equal. Here again, however, the same remark as to difference of age,

and the shorter tenure likely in one class, is applicable to the councillors of English extraction. The proportions of members who hold offices to those who do not, is 8 to 32. The Committee of 1828, it will be remembered, thought it enough to advise that the office-holders should *not constitute a majority.*

The diminishing space before him warns the Author to be brief. One of the favourite topics with those who have not taken the pains to inform themselves on the special facts of the dispute in Canada, is an attempt to draw a parallel with the dispute which led to the separation of the present United States. Now, independently of the difference between imposing a new tax, and merely applying money, which having actually accrued in the chest, was lying there due to the public servants, who had long since legitimately earned it, — independently of the difference between, in the one case, attempting to raise a direct tax of a peculiarly annoying nature, and in the other only appropriating to the common ends of civil administration money that had flowed into the Government coffers in the silent and imperceptible course of trade, without inconvenience to any one, — independently of these distinctions, which, whether or not they affect the principle of the question, are at any rate extremely important as regards the amount of provocation offered (and what point can be more material in a rebellion than the extent of the provocation?), there remains this re-

markable and decisive ground of discrimination between the two cases, — that in the one the money was claimed for the use of the Mother-Country, and the power of raising it for that object asserted as a permanent right to be constantly exercised; that in the other the money has been applied only to the most indispensable colonial purposes, and the power of application not been resorted to, except as a last expedient, in a quarrel which the adverse party choose to render desperate. It was not, as Lord John Russell very happily expressed it, a measure of Finance, but a measure of Defence.

That it was nevertheless a measure of defence which the Mother-Country was fully entitled by the law and Constitution to adopt, the Author has not the smallest doubt. To form one empire, there must be somewhere or other one supreme power. In the British Empire that power resides in the Parliament. Now this Parliament had bestowed on the British subjects in Canada a Constitution which, so long as the different bodies that it created were willing to abide by it, they were allowed freely and fully to exercise; but when one of these bodies declared that unless another co-ordinate authority erected at the same time with itself, and by the same act, were destroyed, it would never more discharge its own functions, this recusant body renounced the benefit of the form of Legislature hitherto enjoyed by the Provinces: it is not merely admitted, but is absolutely insisted that this Con-

stitution was to work no longer; and to say, after this, that it was the Government of Great Britain which overthrew the Assembly of Canada, — to ask as if it were a parallel question, — "What "would the English people do if Ministers were "to take measures to prevent the necessity of "assembling Parliament?" is a manner of putting facts quite peculiar to the curious publication in which it appears.*

Take the analogous case of a Municipality created by Act of Parliament. Suppose that the new-born authorities should not be pleased with the nature or distribution of the privileges conferred upon them — that they should say they did not like the way of choosing their Mayor, or that they thought the manner of filling the vacancies in their Council might be improved — and suppose they should further announce that until their views on these subjects were satisfied, they would no more attend to the police and repair of the town, — does any one doubt what would be the rights of Parliament? Can it be supposed that Parliament would have no choice but to let itself be forced by this step to confer upon them a new Constitution which it might have reason to think pernicious? No, we all know what Parliament would do. It would not yield; but neither would it let the public suffer by the Corporation's contumacy. It would *light and pave their town for them.*

The Legislative Assembly of a large and popu-

* The Canadian Portfolio, by Mr. Roebuck and others.

lous colony is, no doubt, a far more important institution, and one which it is very desirable should have a due sense of its own dignity, and resemblance to the honourable body at home of which it is a copy; but still if it pushes matters to such extremities as the Assembly of Lower Canada, the same argument will apply which is stated in the preceding paragraph, and for the same reason, namely, that such conduct must bring out the essential distinction between a subordinate and a supreme Legislature.

Remark also that it is not true that the course adopted towards Lower Canada, is as if the power of the House of Commons to refuse its votes of money were disputed. So long as the Assembly kept to objects *within* the Constitution, although it far exceeded the practice, yet, not going beyond the docrines known in the Mother-Country, its refusals of the necessary appropriations for the public service *were not resisted.* The advance from the Military Chest in 1834 was made with the hope that they would repay it, but their right to withhold their own funds was not denied. But if the House of Commons itself were to stop the supplies for such a purpose as the more recent stoppages of them in Lower Canada, and were to express a similar determination never to relax until a co-ordinate branch of the same Legislature were destroyed, no one would be at a loss to understand what was meant. It would be no fine-drawn question about Constitutional rights. "To your

"Tents, O Israel!" would be the meaning, which every man would immediately comprehend; unless there were so overwhelming an opinion in concurrence with the Commons as to preclude resistance; in which case their proceeding would be supported, not because it was a *Constitutional right* (which would be as dust in the balance, if the people dissented from the end proposed), but because the force of the nation would be with it. Just in like manner would the Assembly have declared an immediate civil war by its resolutions of 1835 and subsequent years, were it not that, being not the Supreme Legislature, they had the advantage of yet one appeal before the *dernier ressort.* It is because they would not respect the mild and paternal authority which they thus came before, that one part of their country is now in arms; and it would be hard indeed to throw the blame on that preceding intervention which did not originate, but, on the contrary, postponed for one stage, a trial of strength that must otherwise have ensued immediately on the Assembly's first decision on the subject. Without going further, enough is said to show that the resistance to the Assembly's stoppage of supplies is nothing different from what might be expected in a similar case by the House of Commons; for that, by the constitution of human nature, which is more powerful than all written Constitutions, the submission to privileges used for such desperate ends must depend upon the force which can be arrayed, and not upon the forms which can be quoted, on each side of the question.

It may further illustrate the singular absence of irritating matter in this insurrection, to observe, that after all no Canadian funds have yet been touched. Although undoubtedly it is intended to do so, the necessity (how reluctantly acquiesced in every action proves) has once more been deferred by obtaining from the House of Commons a Vote of Credit for the current year. The difference is not substantially important, perhaps, but still it is an additional instance how very little there has been, in this case, of all that usually provokes and hurries away men into rash ebullitions. There has been no outward and visible sign to summons their angry feelings: the monies still lie where so long they have loved to keep them, buried in the vaults beneath the Château-Yard: — they still lie there, where day after day, for years past, they have been trodden over by the men whose rightful earnings they constituted, but who were left by the want of them to become the victims of creditors and bailiffs, and some of them to be stripped of the fruits of whole lives of prudence, through this merciless infliction in a quarrel not their own.

The author had hoped to be content with a substantive statement of the facts, and leading arguments of his subject, leaving it to others, who might seize their spirit, to expose the numerous fallacies put in circulation on the same matter. Seeing, however, how active are the gentlemen who have assumed to themselves the title of "Friends of Canada;" — how ubiquitous; — how

they are ever appearing in some new character on this side of the water or that,—at one moment correspondents in their own papers, at another holding the editor's pen in papers which are not their own;—considering the wonderful display of public opinion which is thus produced by throwing backwards and forwards the voice of two or three individuals:

"Alp answers alp; each mountain calls its brother:"

it is perhaps a proper tribute to so much industry not to pass over in silence the work which has come forth by the name of the "Canadian Portfolio." Its general weakness, and the strange inaccuracy of its statements, seem to have become so well-known in London as might still have dispensed with the necessity of noticing it. But for the benefit of country readers, a few extracts, with a plain account of the facts subjoined, may be useful; and for that purpose will be selected some of the gravest of the subjects which this, for the most part frivolous, miscellany will yield.

Extract. Portfolio, No. I. page 10.:—"They always offered," (the Assembly, that is to say,) "and were ready to grant a yearly civil list. "They have in reality never refused the sup-"plies; the refusal has always come from the "Legislative Council, who have regularly thrown "out the money bills not to their liking."

Portfolio, No. I. page 12. note:—"Remember "that in every case the real refusal of the supplies "came from the Legislative Council. They have

" been voted annually, it is true." (What is true?)
" That annual vote has been refused, and the
" money taken without the sanction of the law."

The Assembly refused the supplies in 1833. They refused them in 1834. In March 1836, when it was three years and a half since any money had issued from the provincial chest, they granted the supplies for six months. In October 1836, they again refused the supplies absolutely. They refused them in August 1837.

No refusal, "real" or otherwise, proceeded from the Legislative Council on any of these occasions, except the six months' supply in March 1836, which they threw out. These are facts which have never by any party been matter of controversy. It is impossible to controvert them. The journals of the Provincial Legislature establish them. English readers may find proof, if they want it, in the despatches in the Commons' Papers, No. 96. 1837; and No. 72. Dec. 1837.

Portfolio, page 10.:—"Moreover the case of
" Canada is yet more marked; they have no
" Meeting Bill, and few estimates beyond their *Civil*
" *Expences*. If they were to grant these last for
" a term of years, where would be their security
" for the calling together of their Parliament?"

What the Government has for some years asked of the Assembly is a civil list, containing, exclusively of the judges, the names of *five individuals*, including the governor and his secretary.* Per-

* Commons' Papers, No. 96. 1837. p. 28. 59.

haps it will be admitted that a permanent appropriation to this extent could hardly have dispensed with the necessity of calling parliaments to maintain the Government. — By the way, the calling of parliaments annually is provided for by express enactment in Canada.* But mark the spirit in which the above passage is conceived: in every other place, before and after, the proper and customary expression of *Civil List* is employed: the words *Civil Expences* are substituted in this one place, to let the reader suppose that the whole charges of Government were asked for. And to complete this exhibition of the utterly misleading effect of many of the passages in this publication, it may be mentioned that even if all the salaries and contingencies of civil administration had been granted, it is by no means the case that there are few other expenses beyond them. A table printed with one of the Commissioners' reports†, shows that for ten years ending in 1834, the charges of the civil and judicial establishments were seldom much more, and often much less, than half the general expenditure of the Province, and sometimes not a fourth of it. Roads, bridges, schools, and the expenses of the Legislature go to compose the rest.

Portfolio, No. I. Page 1.:—"Was not Mr. Felton "sheltered to the very last year? Was not every

* The Constitutional Act of 1791 directs it.

† Commons' Papers, No. 50. 1837. p. 38.

" attempt to bring him to account and trial treated " as an infringement of the Royal Prerogative ? "

The first time that ever Mr. Felton was accused by the House of Assembly to the Government, as far as the writer of the present remarks can ascertain, was in February 1836. He was reported against, and suspended by the Provincial Government, on the 6th of August 1836. He was finally dismissed by the Secretary of State on the 23d of November 1836. Not a word of complaint by the Government against the Assembly's bringing the charge appears in the proceedings, the whole of which may be seen in the Commons' Paper, No. 220.—1837. Two previous parliamentary papers, (Nos. 75, and 489 — 1836) seem to show that the Government took the initiative, in suspecting, and inquiring into, Mr. Felton's conduct. How prompt and unremitting and judicious were the endeavours to bring the matter to a decision, after once the Assembly's accusation was received, appears conspicuously on the face of the correspondence.

The Portfolio asks, at page 13. of No. I., what should we say to the executive, after grave charges against public functionaries had been unanimously brought to it by the House of Commons, if it said " You are a party, a factious party ; we can- " not believe what you have to say, so we will " send to these men, and ask them what they " have to say for themselves."

Certainly in England such a question might appear not quite so necessary as in Canada, because,

in England, it is not the custom to bring heavy charges as proved against individuals, and to demand their punishment, without having already taken the precaution of "asking them what they have to say for themselves;" yet, even in England, it is thought that something more is to be done, after the accusation is thus preferred: — there is a ceremony called a trial, which, in this country, is considered not altogether foreign to the ends of justice. There being no Court at present in the Province to conduct trials on public officers, the Government does its best to supply the defect by those investigations, which the Assembly denounces as a wrong. But independently of this question of trial after accusation, it is the fact in Canada, the astounding and incredible fact, yet most true, — that the accusations themselves are brought without hearing the accused, or even letting them know that they exist, and that there are cases in which the individuals having afterwards learned that they were charged, by finding themselves condemned, entreated to be heard in their defence, but were refused.*

Take the case of Judge Thompson, which is put

* Mr. Christie's case is an example. Having found himself condemned on a charge, which came out incidentally in a Committee on another subject, where he did not attend, he represented that he had not been heard, and asked, in temperate language, to be allowed a hearing. His petition was voted a contempt of the House, and he was expelled for his supposed offence. This extraordinary fact is literally and minutely true. It may be verified from the Assembly's Journals of 1829.

forth as a grievance at page 53. of No. II. of the Portfolio,—a passage, it may be observed, where, in conformity with the spirit of the Assembly, the accusation is entered at length, but the very existence of a reply is not mentioned. Judge Thompson had no opportunity of producing witnesses in his favour, or cross-examining witnesses opposed to him; he had no notice given him of the charges against him; the individual who petitioned against him (an advocate practising in the Judges' Court) sat on the Committee for inquiring into the case, with all the resources of a powerful and wealthy Assembly at his command (for the expenses of witnesses go down in those much-prized contingencies, which they insisted on rescuing from the common fate of the other lost supplies,); and on such *ex-parte* examinations, unchecked by the sanction of an oath, Judge Thompson's instant dismissal was demanded. As soon as the Governor gave him notice of the charges, he replied by adducing very strong testimony on oath in refutation of them. The case is not finally adjudged, but stands over for investigation. The Assembly, and the gentleman who has written the second number of the Portfolio, complain that he was not dismissed without it. The public of England will judge which is right.

Of course no general analysis is intended to be offered, by the preceding remarks, of the errors of as much as has yet appeared of this exceedingly fugitive publication. Only a few specimens have

been chosen to stamp its character, and the reader must be detained no longer on such topics. He must be left to draw his own inferences. There is one remark, however, which the author cannot refrain from adding. Unimpeachable as he knows his facts to be, and scrupulously as he has verified them, though a strong and living recollection of many of them might well have excused a less laborious method of writing, he still is too well acquainted with the weapons usual in Canadian controversy, to suppose that he is on that account the less exposed to unfounded contradictions. Should such appear, he would request of any one who takes sufficient interest in the subject, first that he will not overlook the references to public and accessible documents with which all the leading statements of this work are fortified; and, secondly, that he will refresh his memory by a perusal of the preceding extracts from the Portfolio, and the expositions annexed to them. After that he will probably forgive the author of the present work if he is remiss enough not to answer every attack that may come from the press.

Passing from particulars, it may be stated to be the general character of the controversy on the part of those who claim peculiarly the style of "Friends of Canada," to dwell still in minor, or irrelevant, or obsolete disputes, and not to venture on closing with their adversaries in a clear, compact narrative of the modern events on which the right

or the wrong of the present conflict must turn. They love to insist upon the oppressions of 1810, but they forget the mild and popular administration which succeeded, and the proof which the Canadians gave of their accepting the amends, by fighting the battles of England in 1812. They enlarge on the wrongs in the ten years previous to 1828, but they take no account of the great settlement of grievances which was made by the Parliamentary Report of that year, and the subsequent execution of its recommendations. The topics which they labour upon are the topics that have been wiped out of the reckoning. The real ground of the existing struggle consists, as has already been explained, of demands never heard of until within the last four years, and yet demands embracing the most extensive questions of constitutional law and public and private rights. No specific local grievances are even pretended to be the cause of this revolt. The point at issue is, whether in the relations between the mother-country and a colony, the mother-country is to be permitted to have a voice of her own; whether she is to exercise any firm judgment at all, or whether, at the summons of one single branch of the Provincial Legislature, she is to be under the necessity, at all times and for all purposes, of submitting to every transposition of power which they may dictate, without pausing to consider whether or not it be consistent with the essentials of a connection between one country and another, without regard to the question whe-

ther the change be formidable and odious to a large and wealthy and thriving part of the population within the same provinces, without regard to its bearing on the circumstances of the provinces that adjoin. We have seen how the language, the laws, and the religion of the people, some of whom have risen in arms, have been protected. We have seen examples, beyond all account, both of the forbearance and of the liberality of the British Government.

It is now for the public to declare, Is this rebellion justified or is it not?— The answer can hardly be doubted. The people of England will see that there is no reason for the absurd cry of oppression, and therefore no reason to sympathise in the resistance which has been offered to the laws. There is no reason, they will see, to pour forth all manner of wishes and aspirations in favour of the men who have betrayed an inoffensive and worthy peasantry into a disastrous civil war; nor to countenance and invite aggressions on a British territory by foreign nations; nor to disseminate through every channel plans for rendering the struggle as long and as mischievous as may be. There is no reason to *gloat*. Finally, the people of England will probably not see why the House of Commons should have been polluted, and the taverns of Westminster should have reeked, with expressions of pleasure, at the reported defeat of British troops; of satisfaction at the prospect of the confiscation of British property; — of great

joy, that battle and murder, and sudden death were set afoot over a country, where one short twelvemonth ago there reigned the most profound peace and tranquillity.

APPENDIX.

Enclosure No. 2. in Lord Aberdeen's Dispatch to Lord Amherst, dated 2d April. No. II. — *Commons Paper*, 113, 1836, p. 36.

A Minute shewing in what manner the Recommendations of the Canada Committee of 1828 *have been carried into execution by His Majesty's Government.*

In the following pages, Lord Aberdeen will attempt to shew that there was sufficient reason to anticipate the entire conciliation of Lower Canada from the accomplishment of the Resolutions of the Canada Committee, and that to the utmost of the power of the Crown, those Resolutions were, in fact, carried into execution.

The appointment of the Canada Committee of 1828, was, on every account, an important proceeding. The redress of grievances had been demanded, not by an isolated party, but by both of those great bodies which divide between them the wealth and political authority of the Province. With views essentially dissimilar, or rather hostile, they had concurred in an appeal to the Metropolitan Government.

By each body of Petitioners were deputed agents authorised to interpret their wishes, and to enforce their claims. The Committee itself was certainly not composed of gentlemen unfavourable to the views of the great numerical majority of the House of Assembly. They pro-

secuted the enquiry with great diligence and zeal. They examined the agents of both parties, and every other person capable of throwing light on the subject referred to them. None of the questions brought under their notice, either by the Petitioners or by the witnesses, was unexplored; and, in the result, a report was made, in which with an explanation of every known or supposed grievance, were combined suggestions for the guidance of the Executive Government in applying the appropriate remedies.

The House of Assembly in Lower Canada in their answer to the address with which the Administrator of the Government opened the session of the Provincial Parliament in the winter of 1828, characterised this Report in terms which may be transcribed as expressing, on the highest local authority, the claims of that document to respect, as affording a guide at once to the Canadian Assembly, and to the Ministers of the Crown, of the rights to be asserted by the one, and conceded by the other. "The charges and well founded complaints (observed the "House) of the Canadians before that august Senate were "referred to a Committee of the House of Commons, in- "dicated by the colonial minister, that Committee exhibiting "a striking combination of talent and patriotism, uniting a "general knowledge of public and constitutional law to a "particular acquaintance with the state of both the Ca- "nadas, formally applauded almost all the reforms which "the Canadian people and their representatives demanded "and still demand. After a solemn investigation, after "deep and prolonged deliberation, the Committee made a "Report, an imperishable monument of their justice and "profound wisdom, an authentic testimonial of the reality "of our grievances, and of the justice of our complaints, "faithfully interpreting our wishes and our wants. Through "this Report, so honourable to its authors, his Majesty's "Government has become better than ever acquainted "with the true situation of this Province, and can better "than ever, remedy existing grievances and obviate diffi-

" culties for the future." Language more comprehensive or emphatic, could not have been found, in which to record the acceptance by the House of Assembly, of the Report of 1828, as the basis on which they were content to proceed for the adjustment of all differences. The questions in debate became thenceforth, by the common consent of both parties, reducible to the simple enquiry whether the British Government had, to the fullest extent of their lawful authority, faithfully carried the recommendations of the Committee of 1828 into execution.

On a review of all the subsequent correspondence, Lord Aberdeen finds himself entitled to state that, in conformity with the express injunctions, and the paternal wishes of the King, his Majesty's confidential advisers have carried into complete effect every suggestion offered for their guidance by the Committee of the House of Commons.

It is necessary to verify this statement by a careful and minute comparison between the advice received, and the measures adopted. To avoid the possibility of error, the successive recommendations of the Committee of 1828 shall be transcribed at length, with no other deviation than that of changing the order in which the topics are successively arranged in their Report, an order dictated by considerations of an accidental and temporary nature, but otherwise inconvenient, as postponing many of the weightier topics to some of comparatively light importance.

First, then, the Report of 1828, contains the following advice of the Canada Committee on the subject of finance —" Although from the opinion given by the Law Officers " of the Crown, your Committee must conclude that the " legal right of appropriating the revenues arising from the " act of 1774 is vested in the Crown, they are prepared to " say that the real interests of the Provinces would be " best promoted by placing the receipt and expenditure of " the whole public revenue under the superintendence and " control of the House of Assembly." " If the officers " above enumerated are placed on the footing recom-

"mended," (that is, in a state of pecuniary independence on the Assembly) "your Committee are of opinion that "all the revenues of the Province, except the territorial "and hereditary revenues, should be placed under the con- "trol and direction of the Legislative Assembly."

The strict legal right of the Crown to appropriate the proceeds of the statute 14 *G.* 3. *c.* 88., being thus directly maintained, the renunciation of that right was recommended, on condition that "the Governor, the members, "of the Executive Council and the Judges should be made "independent of the annual votes of the House of As- "sembly for their respective salaries." What then has been the result? His Majesty has renounced these his acknowledged legal rights, but has not stipulated for the performance, on the part of the Assembly, of the condition thus imposed upon them, and, to the present moment, that condition remains unfulfilled. By the British statute 1 & 2 *W.* 4. *c.* 73., which was introduced into Parliament by his Majesty's then confidential advisers, the appropriation of the revenues of the 14th *G.* 3. is transferred to the Assembly absolutely, and without either that qualification which the Committee proposed, or any other. Here, then, it cannot be denied that their advice has been followed, not only with implicit deference, but in a spirit of concession which they did not contemplate.

Secondly. On the subject of the Representation of the people in Lower Canada, the opinion of the Committee was expressed in the following terms: — "Your Committee "are now desirous of adverting to the representative "system of Lower Canada, with respect to which, all "parties seem to agree that some change should take "place." After detailing the various causes which had led to an inequality in the number of the members of the Assembly in favour of the French inhabitants of the Seigniories, and therefore to the prejudice of the inhabitants of English origin in the townships, the Committee passed from the subject with the following general

remark. "In providing a representative system for the "inhabitants of a country which is gradually compre- "hending within its limits newly peopled and extensive "districts, great imperfections must necessarily arise from "proceeding in the first instance on the basis of popu- "lation only. In Upper Canada, a representative system "has been founded on the compound basis of territory and "population. This principle, we think, might be ad- "vantageously adopted in Lower Canada."

It was with the entire concurrence of his Majesty's Government, that the legislature of Lower Canada assumed to themselves the duty of giving effect to this part of the advice of the Committee. That Report had laid down the general principle that, with one exception, "all changes, "if possible, be carried into effect by the local Legislature "themselves;" and to that principle the Ministers of the Crown adhered, even in a case where the dominant majority of the Assembly had an interest directly opposed to that of the great body of English inhabitants, for whose special relief the new Representation Bill was to be enacted. Such a Bill was accordingly passed, and was reserved for the signification of his Majesty's pleasure. It actually received the Royal Assent, and is, at this day, the law of the Province.

In this case, also, the concessions made to the Canadian inhabitants of French origin, were far greater than the authors of the Report of 1828 could have had in contemplation. The Upper Canadian principle of combining territory and population, as the basis of elective franchise, was *not* adopted in Lower Canada: the Assembly substituted for it a new division of the country, of which the effect has been to increase rather than to diminish the disproportion between the number of members returned by the English and those representing the French Canadian interest. This result of the Bill was distinctly foreseen by the official advisers of the Crown, and it became the subject of grave deliberation whether his Majesty

should be advised to acquiesce in a scheme which followed the advice of the Canada Committee, so far indeed as to effect a material change in the Representative Body, and so far as to give to the English settlers a few more voices in the Assembly, but not so far as to secure to them any additional weight in the deliberations of that House. It is not within the object of this Minute to defend or to explain the motives of the ultimate decision in favour of the Bill. For the present purpose it is enough to say, that the acceptance of it gave to the Canadians of French origin far more than the Report of 1828 authorised them to expect.

Thirdly. Inferior only in importance to the topics already noticed, is that of the independence of the Judges, respecting which the following passage may be extracted from the Report of 1828:—"On the other hand, your "Committee, while recommending such a concession on "the part of the Crown," (the concession, that is, of the revenue,) "are strongly impressed with the advantage of "rendering the Judges independent of the annual votes of "the House of Assembly for their respective salaries. "Your Committee are fully aware of the objections in "principle, which may be fairly raised against the practice "of voting permanent salaries to the Judges who are "removable at the pleasure of the Crown; but being "convinced that it would be inexpedient that the Crown "should be deprived of the power of removal; and "having well considered the public inconvenience which "might result from their being left in dependence on the "annual vote of the Assembly; they have decided to make "the recommendation, in their instance, of a permanent "vote of salary."

Thus the Canada Committee of 1828 were of opinion that the Judges ought to be independent of the Assembly for their incomes, but ought to continue liable to removal from office at the pleasure of the Crown. Yet so far have the British Government been from meting out relief to the Province grudgingly, or in any narrow spirit, that they

have left nothing unattempted which could secure to the Judges, not merely that pecuniary independence which the Committee advised, but that independent tenure of office also, which their Report expressly dissuaded. In the adjacent province of Upper Canada, both objects have been happily accomplished. In his dispatch of the 8th February 1831, No. XXII., the Earl of Ripon explained to Lord Aylmer the course of proceeding which had been adopted for asserting the independence of the Judges in this Kingdom, and signified to the Governor his Majesty's commands to avail himself of the earliest opportunity for proposing to the Legislative Council, and Assembly of Lower Canada, the enactment of a Bill declaring that the Commissions of all the Judges of the Supreme Courts should be granted to endure during their good behaviour, and not during the Royal pleasure: and Lord Aylmer was further instructed, in the name and on the behalf of his Majesty, to assent to a bill for carrying that object into effect. Lord Ripon, however, declared it to be, of course, an essential condition of this arrangement, that "an adequate and permanent provision should be made "for the Judges." It remains to state the result. A Bill was passed by the House of Assembly, by which, indeed, the tenure of the judicial office was made to depend on the good behaviour of the Judges, and by which a provision, adequate in amount, was made for them. But that provision was so granted as to be liable to be diminished or taken away by the annual votes of the House of Assembly. To this measure, so popular in its general character or pretensions, were also "tacked" (to adopt the usual parliamentary phrase) clauses by which a right to dispose of the Territorial Revenue of the Crown was asserted, and by which all the public officers in the Colony, — the Governor himself not being expressly excepted — were made amenable to a tribunal, to be constituted for the trial of all impeachments preferred by the Representatives of the People. Such was the return made to an act of

grace, which the Canada Committee themselves had expressly dissuaded. To have acquiesced in it would have involved a sacrifice of whatever is due to the dignity of the King, and to the liberties of His Majesty's subjects. His Majesty's assent was, therefore, withholden, though not without the expression of the deepest regret, and the most distinct offer to assent to any other Bill for establishing the independence of the Judges which should be exempt from such objections. The House of Assembly, however, have never since tendered an act of that nature for the acceptance of his Majesty, or of his Majesty's Representative in the Province.

Fourthly. The next topic is that of the composition of the Legislative and Executive Councils, respecting which, the following suggestions occur in the report of 1828: — "One" (it is said) "of the most important subjects to "which their inquiries have been directed, has been the "state of the Legislative Councils in both the Canadas, "and the manner in which these Assemblies have answered "the purposes for which they were instituted. Your "Committee strongly recommend that a more independent "character should be given to these bodies; that the "majority of their members should not consist of persons "holding offices at the pleasure of the Crown; and that "any other measures that may tend to connect more inti-"mately this branch of the Constitution with the interest "of the Colonies, would be attended with the greatest "advantage. With respect to the Judges, with the ex-"ception only of the Chief Justice, whose presence on "particular occasions might be necessary, your Committee "entertain no doubt that they had better not be involved "in the political business of the House. Upon similar "grounds, it appears to your Committee that it is not "desirable that Judges should hold seats in the Executive "Council."

With what scrupulous exactness these recommendations have been followed, will now be shewn. With respect to

the Judges, Lord Ripon, in the despatch of the 8th of February already quoted, conveyed to Lord Aylmer his Majesty's commands to signify to the Legislative Council and Assembly his Majesty's settled purpose to nominate, on no future occasion, any Judge as a member, either of the Executive or of the Legislative Council of the Province. It was added, that the single exception to that general rule would be, that the Chief Justice of Quebec would be a member of the Legislative Council, in order that the members of that body might have the benefit of his assistance in framing laws of a general and permanent character. But his Majesty declared his purpose to recommend, even to that high officer, a cautious abstinence from all proceedings, by which he might be involved in any political contentions of a party nature.

It was not in the power of the King's Government to remove from the Legislative Council any of the Judges who had already been appointed to be members of that body; because the terms of the Constitutional Act secure to them the enjoyment of their seats for life. But in a private despatch of the same date, the four gentlemen who had at that time combined the judicial character with seats in the Council, were earnestly exhorted to resign their places as Councillors, and were assured that nothing should be wanting to rescue them from any possibility of misconstruction, as to the motives by which that advice had been dictated or obeyed. In point of fact, it was not accepted; but the Judges unanimously agreed to withdraw from all active interference in the business of the Council, and have never since attended its sittings. The Chief Justice indeed, as was recommended by the Canada Committee, forms the single exception; but even that gentleman, as far as the information of this office extends, has confined his interference within the limits prescribed to him by the Committee, and by the Earl of Ripon.

The principles laid down by the Committee of 1828, for regulating the composition of the Legislative Council,

have been not less strictly pursued, in every other respect. Since the date of their report, eighteen new members have been appointed. Of that number there is not one who holds any office or place of emolument at the pleasure of the Crown, or who is in any other manner dependent upon the favour of his Majesty, or his official advisers. Of the eighteen new members, ten are of French origin. The total number of Councillors is thirty-five, of whom only seven hold public offices. Amongst them is the Bishop of Quebec, who is, in the fullest sense of the term, independent of the Crown. The Chief Justice, whose dependence is altogether nominal, is another. Of the whole body of thirty-five members, there remain therefore but five over whom the Executive Government can, with any reason or plausibility, be said to possess any direct influence.

It is therefore not without a reasonable confidence, that the words in which the Committee of 1828 suggest the proper composition of the Legislative Council, may be adopted as precisely descriptive of the manner in which it is actually composed. "A more independent character" has been given to that body. The "majority of the mem-"bers" does *not* consist of "persons holding office at the "pleasure of the Crown." This branch of the Constitution has been connected "more intimately with the interests of "the Province," by the addition of a large body of independent Canadian gentlemen.

But the case may be carried still further, and it may be shewn that, in respect to the councils, the efforts of Lord Aberdeen's predecessors have left behind them the advice of the Canada Committee. The executive council has also been strengthened by the addition of three members of French origin. A seat was offered to Mr. Neilson, the most prominent of the delegates from the House of Assembly of 1828, and to M. Papineau, the Speaker of that House. It need scarcely be said that it was impossible to give a more decisive proof of the wish of the Ministers of

the Crown, that the composition of the Canadian Councils should be acceptable to the great majority of the people.

Fifthly. The next in order of the recommendations of that Committee relates to the Clergy Reserves, a subject on which they employed the following language:— "As your Committee entertain no doubt that the reserv- "ation of these lands in mortmain is a serious obstacle to "the improvement of the Colony, they think every proper "exertion should be made to place them in the hands of "persons who will perform upon them the duties of settle- "ment, and bring them gradually into cultivation."

Although the views of the Committee were thus limited to the improvement of the Clergy Reserves, the Government advanced to the redress of the evil indicated in the Report, by a measure, not only far more decisive, but eminently remarkable for the confidence it expressed in the Provincial Legislature. The constitutional act having authorised his Majesty, with the advice of the Legislative Council and Assembly, to vary or repeal any of the provisions therein made for the allotment and appropriation of lands for the support of the Protestant Clergy, Lord Ripon, availing himself of that enactment, proposed that the power of repeal should be exercised by those bodies, and should be accompanied with a declaration that the reserved lands should merge in the general demesne of the Crown. The object of this proposal was to bring the reserves within the reach of the general rules, under which all the waste lands of the province are progressively sold to the highest bidder. To prevent any possible misconception of the views of his Majesty's Government, the draft of a Bill for the accomplishment of this design was transmitted to Lord Aylmer, with instructions to give his assent if such a law should be presented for his acceptance. To obviate the risk of offence being given, by suggesting to the House of Assembly the exact language as well as the general scope of a measure to originate with them, Lord Aylmer was directed to proceed with the most

cautious observance of the privileges of that Body, and of all the constitutional forms. Anticipating the contingency of the measure being adopted in substance, but with variations in the terms, Lord Ripon further stated that, in that event, the Bill was not to be rejected by the Governor, but was to be specially reserved for the signification of his Majesty's pleasure.

In obedience to these directions, the Bill was introduced into the House of Assembly, but did not pass into a law. That it would have effectually removed the grievance pointed out by the Canada Committee, has not been disputed; nor can the Ministers of the Crown be held in any sense responsible for the continuance of an evil for which they had matured so complete a remedy. The only explanation which has ever been given of the failure of the proposal, is, that the Solicitor General, Mr. Ogden, had used some expressions, whence it was inferred that his Majesty's Government would reject the Bill if altered in a single word. It is scarcely credible, that this should be an accurate surmise of the real cause of the loss of the Clergy Lands Appropriation Bill. It is not to be believed that the Assembly of Lower Canada would have rejected an unobjectionable proposal for the redress of a grievance of which complaint had been long and loudly made, for no other reason than that a public officer, not of the highest rank or consideration, had used some casual expression, in which the ultimate views of his Majesty's advisers were inaccurately explained. To the Governor application could have immediately been made for more authentic information; and, in fact, the tenour of the despatch which had been received by Lord Aylmer, was perfectly well known throughout the Province to every person who felt any interest in the subject. The measure has never since been revived; and it must be therefore assumed, that the Assembly are less anxious than Lord Ripon supposed, for the removal of this obstruction to agriculture and internal improvement. Be that as it may, the British Government

are completely absolved from the responsibility thrown upon them by this part of the Report of the Canada Committee.

Sixthly. That body proceeding to other subjects connected with the wild lands of the Province, expressed their opinion that—"It might be well for the Government to "consider whether the Crown Reserves could not be per- "manently alienated, subject to some fixed moderate re- "served payment, either in money or in grain, as might "be demanded, to arise out of the first ten or fifteen years "of occupation." They add that, "they are not prepared "to do more than offer this suggestion, which appears to "them to be worthy of more consideration than it is in "their power to give to it; but that in this or in some such "mode, they are fully persuaded the lands thus reserved, "ought, without delay, to be permanently disposed of."

In pursuance of this advice, Lord Ripon directed the sale of the Crown Reserves throughout the Province, as opportunity might offer, precisely in the same manner as any other part of the royal demesne. The system has undergone an entire change; and the Crown Reserves considered as distinct allotments, left in their wild state to draw a progressive-increasing value from the improvement of the vicinity, have no longer any existence.

Seventhly. Another abuse connected with the wild lands of Lower Canada was noticed by the Committee, in the following language:—"One of the obstacles which is said "greatly to impede the improvement of the country, is the "practice of making grants of land in large masses to in- "dividuals, who had held official situations in the Colony, "and who had evaded the conditions of the grant, by which "they were bound to provide for its cultivation, and now "wholly neglect it. Although powers have been lately "acquired by the Government to estreat those lands, and "although we think that, under certain modifications, this "power may be advantageously used, we are nevertheless "of opinion that a system should be adopted similar to that

" of Upper Canada, by the levy of a small annual duty on " lands remaining unimproved and unoccupied contrary to " the conditions of the grant."

The remedial measure of a tax on wild land, which is suggested in the preceding passage, could, of course, originate only with the representatives of the people, and the House of Assembly have not indicated any disposition to resort to that mode of taxation. To such a Bill, if tendered by them, his Majesty's assent would have been cheerfully given. Yet the King's Government did not omit to avail themselves of all those remedial powers with which the Crown is entrusted. It is little to say (though it may be stated with the strictest truth,) that since the date of the Report, the system reprobated by the Committee, of granting land in large masses to individuals, has been entirely discontinued. It is more material to add that this change in practice is the result of a series of regulations established on Lord Ripon's advice in Lower Canada, and indeed throughout all the other British Colonies. The system of gratuitous donations of land has been abandoned absolutely and universally; and during the last three years all such property has been disposed of by public auctions to the highest bidder, at such a minimum price, as to insure the public at large against the waste of this resource by nominal or fictitious sales. This is not the occasion for vindicating the soundness of that policy, which, however, if necessary, it would not be hard to vindicate. It is sufficient for the immediate purpose of this minute to have shown, that on this, as on other topics, the Ministers of the Crown did not confine themselves to a servile adherence to the mere letter of the Parliamentary recommendation, but embraced and gave the fullest effect to its genuine spirit.

Eighthly. The Committee sought to relieve the Province not only from the evils of improvident reservations and grants of wild lands, but from those incident to the tenures on which the cultivated districts are holden. The follow-

ing passages on this subject appear in their report:—"They "do not decline to offer as their opinion, that it would "be advantageous, that the declaratory enactment in the "Tenures Act, respecting lands held in free and common "soccage, should be retained." "Your Committee are "further of opinion that means should be found of bring- "ing into effective operation the clause in the Tenures "Act, which provides for the mutation of tenure: and "they entertain no doubt of the inexpediency of retaining "the seigneurial rights of the Crown, in the hope of deriv- "ing a profit from them. The sacrifice on the part of the "Crown would be trifling, and would bear no proportion "to the benefit that would result to the Colony from such "a concession." "The Committee cannot too strongly "express their opinion, that the Canadians of French ex- "traction should in no degree be disturbed in the peaceful "enjoyment of their religion, laws, and privileges, as se- "cured to them by the British acts of Parliament; and so "far from requiring them to hold lands on the British "tenure, they think that when the lands in the seigneuries "are fully occupied, if the descendants of the original "settlers shall still retain their preference to the tenure of "*fief et seigneurie*, they see no objection to other portions "of unoccupied lands in the province being granted to "them on that tenure, provided that such lands are apart "from, and not intermixed with, the townships."

The British Government are again entitled to claim the credit of having, to the utmost possible extent, regulated their conduct by the language, and still more by the spirit of this advice.

No application has been made for the creation of a new seigneurie, as indeed the period contemplated by the Committee, when the seigneurial lands would be fully occupied, still seems very remote. It is almost superfluous to add that no attempt has been made to superinduce upon those lands any of the rules of the law of England.

The Crown also has been prompt to bring into the most

effective operation the clause of the Canada Tenures Act, which provides for the mutation of tenures. But no Lord or censitaire having hitherto invoked the exercise of the powers of the Crown, they have of necessity continued dormant. Respecting the soccage lands, some explanation seems necessary.

The general principle adopted by the Committee in the passage already quoted, is that the inhabitants, both of French and of British origin, should respectively be left in the enjoyment of the law regulating the tenures of their lands derived from their different ancestors, and endeared to either party, by habit, if not by national prejudices. It has already been shown that the French Canadians have enjoyed the benefit of this principle to the fullest possible extent. In the anxiety which has been felt to gratify their wishes, it may not be quite clear that equal justice has been rendered to the inhabitants of British descent. The maintenance of so much of the Canada Tenures Act as rendered the soccage lands inheritable and transmissible according to English law, was most unequivocally recommended in the extracts already made from the report. The provincial legislature, however, in their session of 1829, made provision for the conveyance of such lands in a manner repugnant to this British statute. Of course his Majesty could not be advised to assent to a law which directly contravened an Act of Parliament. Such, however, was the anxiety of the King's Ministers to avoid every needless cause of jealousy, that a Bill (1 *W.* 4. *c.* 20.) was introduced into Parliament by Lord Ripon and passed into a law, in order to relieve his Majesty from this difficulty. The Canadian Act was then accepted. Nor was this all. Striving to multiply, to the utmost possible extent, every proof and expression of respect and confidence towards the Provincial legislature, the Government introduced into the British statute, which has been last mentioned, a further enactment, of which the effect was to absolve the Canadian Legislature in future from every restraint laid

upon them, by any act of Parliament regulating the various incidents of the soccage tenure in the Province. The barriers erected for the defence of the British settlers by the caution of Parliament in the years 1791 and 1826 were thus overthrown, in order that there might be the fewest possible exceptions to the principle of confiding to the Canadian Legislature, the regulations of the internal interests of Lower Canada. No one will deny that this unsolicited concession was made in the spirit of the most large and liberal acceptance of the advice of the Canada Committee, so far at least, as the views and interests of the dominant majority of the House of Assembly are concerned.

Ninthly. The next is the subject of the Jesuits' estates; in reference to which the views of the Committee of 1828 are expressed as follows: — "With respect to the estates "which formerly belonged to the Jesuits, your Committee "lament that they have not more full information. But it "appears to them to be desirable that the proceeds should "be applied to the purposes of general education."

Far indeed beyond the letter of this advice did the concessions made by his Majesty on the advice of Lord Ripon proceed. Not only were the Jesuits' estates "applied to "the purposes of general education," but the Provincial Legislature were authorised to determine what specific purposes of that kind should be preferred, and the proceeds of the estates were placed for that purpose unreservedly under their control. No suggestion has been made impeaching the fulness of this concession, except as far as respects certain buildings occupied for half a century past as barracks. Even if a rent should be payable by the Crown for the use of those barracks, (the single question admitting of debate,) it would be idle, on that ground, to deny either the importance of the concession made, or the almost unbounded confidence in the House of Assembly, perceptible in the form and manner

in which the Crown renounced to them, not merely a proprietary right, but even an administrative function.

Tenthly. To the positive recommendations which have already been considered, succeeds another, of which the end is rather to dissuade than to advise the adoption of any specific measure. "The Committee (it is said) are "desirous of recording the principle which in their judg- "ment, should be applied to any alterations in the Con- "stitutions of the Canadas, which were imparted to "them under the formal act of the British Legislature of "1791. That principle is to limit the alterations which "it may be desirable to make, by any future British Acts, "as far as possible, to such points as, from the relation "between the mother country and the Canadas, can only "be disposed of by the paramount authority of the British "Legislature, and they are of opinion that all other "changes should, if possible, be carried into effect by the "local Legislature themselves, in amicable communications "with the local Government."

So rigidly has this principle been observed, that of two Acts of Parliament which, since 1828, have been passed with reference to the internal concerns of the Province, the common object has been so to enlarge the authority of the Provincial Legislature as to enable his Majesty to make with their concurrence, laws to the enactment of which they were positively incompetent. The Acts in question are those already noticed, by which the revenues of George III. were relinquished, and the regulation of soccage tenures was transferred to the Governor, Council, and Assembly.

Eleventhly. "The Committee" (again to borrow their own words) "recommended, for the future, that steps should "be taken by official securities, and by a regular audit "of accounts to prevent the recurrence of losses and in- "conveniences to the Province, similar to those which had "occurred in Mr. Caldwell's case," and "as connected "with this branch of the enquiry, they recommended that

"precautions of the same nature should be adopted with "regard to the sheriffs."

In reference to these suggestions, Sir George Murray proposed to the House of Assembly, and Lord Ripon repeated the proposal, that the public accountants should pay their balances, at very short intervals, into the hands of the Commissary-General, tendering the security of the British Treasury for the punctual repayment of all such deposits. The scheme embraced a plan for a regular audit, and for the punctual demand of adequate securities. Sir James Kempt and Lord Aylmer were successively instructed to propose to the Legislative Council and Assembly the enactment of such a law. The proposal was accordingly made to the Assembly in the year 1829, and was repeated in the year 1832. On each occasion it was the pleasure of the House to pass it by in silence. That they had good reasons for their conduct, it would be unjust and indecorous to doubt. Those reasons, however, remain to this moment completely unknown to the Executive Government, who, having exhausted all their authority and influence in a fruitless attempt to give effect to this part of the Canada Committee's recommendations, cannot, with any reason, be held responsible if they still have failed to produce the advantage contemplated to the Province at large.*

Twelfthly. A further recommendation of the Committee is conveyed in the report, in the following terms: "Your

* The Executive Government have not, however, abstained from such measures as were within their own power. They have established a fire-proof vault, with three keys, held by three separate officers of high rank, all of whom must be present whenever it is opened; and they have provided that the Receiver-General shall not hold in his hands any balance exceeding 10,000*l.* without depositing it in this vault; and that once at least in every year the contents of the vault shall be inspected, or reported on, by five persons named by the Governor for the purpose. They have also taken security from the Receiver-General to the extent of 10,000*l.*, with two sufficient sureties, and have required him to render statements of his accounts on the 1st January, 1st April, 1st July, and 1st October, in every year.

" Committee also beg leave to call the particular attention " of the Government to the mode in which juries are com- " posed in the Canadas, with a view to remedy any defects " that may be found to exist in the present system."

Here, again, the Government pressed upon the House of Assembly the importance of giving effect to the views of the Committee; and, in fact, a law has received the Royal Assent, having for its object the improvement of the jury system — an object which has been pursued by those methods which the House of Assembly themselves devised or adopted.

Thirteenthly. The Report proceeds to recommend, " that " the prayer of the Lower Canadians, for permission to " appoint an agent, in the same manner as agents are " appointed by other Colonies which possess local Legis- " latures, should be granted."

His Majesty's Government have accordingly repeatedly authorised the Governor to assent to any Bill which might be passed for that purpose. No such Bill has, however, been presented for Lord Aylmer's acceptance. The Assembly, in opposition to the advice of the Committee, that the habits of other Colonies should be followed as a precedent, have chosen to nominate, by resolutions of that House alone, gentlemen deputed to represent them in this kingdom, but who have not, as in other Colonies possessing Legislative Assemblies, been appointed by an act of the entire Legislature.

Fourteenthly. Upon the most careful perusal of the report of 1828, no other recommendations can be found addressed to the King's Government, although the Committee addressing themselves in that instance rather to the local Legislature, have advised that mortgages should be special, and that in proceedings for the conveyance of lands, the simplest and least expensive forms of conveyance should be adopted, upon the principles of the law of England; that form which prevails in Upper Canada, being probably, under all circumstances, the best which could be

selected; and that the registration of deeds relating to soccage lands, should be established as in Upper Canada. "In addition," it is added, "to these recommendations, it "appears to be desirable that some competent jurisdiction "should be established, to try and decide causes arising "out of this description of property;" (that is the soccage lands) "and that circuit courts should be instituted within "the townships for the same purposes."

In these passages the design of the Committee was to administer to the relief of the settlers of English origin, and their claims were pressed by Sir George Murray, on the attention of the Assembly. Some advance has been accordingly made towards the establishment of a Registry of Deeds, and of local Courts in the Townships. Respecting the law of mortgages, and the forms of conveyancing, it does not appear that the Assembly have hitherto interposed for the relief of that part of the constituent body.

Concluding at this point the comparison between the advice tendered to the Government, and the measures adopted in pursuance of it, it may be confidently asserted, that the general statement made at the commencement of this statement of this Minute has been substantial. To the utmost limit of their constitutional power and legitimate influence successive administrations have earnestly and successively laboured to carry the Report of 1828 into complete effect in all its parts. It has already been shewn with how cordial an acquiescence that Report was received by the House of Assembly, with what liberal eulogies the talent, the patriotism, the knowledge, and intimate acquaintance with Canadian affairs, of its authors, were commended; how that document was hailed as the faithful interpretation of the wishes and wants of the Canadian people; and how the British Government were called upon by the House of Assembly to look to that Report as their guide in remedying existing grievances, and obviating difficulties for the future. That this guide should have been studiously followed, that its suggestions should have been

invariably construed and enforced, with no servile adherence to the letter, but in the most liberal acceptance of its prevailing spirit, and yet that such efforts should have been unavailing to produce the expected conciliation, may well justify the deepest regret and disappointment.

(Signed) ABERDEEN.

THE END.

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